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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132-1275-02]

RIN 0648-XC006

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit for the June through August 2012 time period, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category permitted vessels and to Highly Migratory Species Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: Effective June 1, 2012, through August 31, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International

Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations.

The 2012 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2012. The General category season, which was open January 1 through January 22, 2012, resumes on June 1, 2012, and continues through December 31, 2012. Unless changed, the General category daily retention limit would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota.

For the 2011 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for the January subquota period (75 FR 79309, December 20, 2010); three large medium or giant BFT for June through November 5 (76 FR 32086, June 3, 2011; and 76 FR 52886, August 24, 2011); and two large medium or giant BFT for November 6 through December 31, 2011 (76 FR 69137, November 8, 2011). The November 2011 adjustment was in conjunction with an inseason quota transfer of 50 mt from the Reserve category to the General category. NMFS adjusted the limit for the 2012 January subquota period from the default level of one large medium or giant BFT to two large medium or giant BFT (76 FR 76900, December 9, 2011). That retention limit was

effective from January 1, 2012, until January 22, 2012, when NMFS closed the fishery because the January subquota had been met (77 FR 3637, January 25, 2012).

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the baseline 2012 General category share is 435.1 mt, and the baseline June through August General category subquota is 217.6 mt. Although NMFS has published proposed quota specifications for 2012 (77 FR 15712, March 16, 2012), the baseline General category subquota as codified would not be changed. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered these criteria and their applicability to the General category BFT retention limit for the June-August 2012 General category fishery. These considerations include, but are not limited to, the following. Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers, continues to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. As this action would be taken consistent with the quotas previously established and analyzed in the 2011 BFT quotas final rule (76 FR 39019, July 5, 2011), and consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health. A principal consideration is the objective of providing opportunities to harvest the full June-August subquota without exceeding it based upon the Consolidated HMS FMP goal: “Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems”. Migration of commercial-size BFT to the fishing grounds off the northeast U.S. coast is anticipated by early June. Lastly, based on General category landings rates during the June through August time-period over the last several years, it is highly unlikely that the June through August subquota will be filled with the default daily retention limit of one BFT per vessel. During the June-August 2011 period, under a three-fish limit, BFT landings were approximately 140 mt. However, based on the pattern exhibited over the last few years, NMFS anticipates an increase in both landings of BFT (in number) and average fish weight for the June-August period in 2012, such that a three-fish limit may result in higher landings than in previous years.

A lower limit could result in unused quota being added to the later portion of the General category season (i.e., rolling forward to the subsequent subquota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next. Increasing the daily limit from three to four or five fish may risk exceeding the available June-August subquota.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip, effective June 1, 2012, through August 31, 2012.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine

that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more

than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective June 1, 2012, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: May 9, 2012

Emily H. Menashes,
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National Marine Fisheries Service.